No. 80-1354

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ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

October Term, 1980

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 241, AFL-CIO,
Petitioner,

v.

ASSOCIATION OF SCIENTISTS AND PROFESSIONAL ENGINEERING PERSONNEL and RCA CORPORATION,
Respondents.

On Petition for Writ of Certiorari to the Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENT RCA CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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F. Elkouri & E. A. Elkouri, How Arbitration Works (3d ed. 1973) 9

COUNTER STATEMENT OF QUESTION PRESENTED

Does a District Court have discretion to order tripartite arbitration of a work assignment dispute between two unions following an arbitration hearing involving one of the unions and the employer which resulted in the issuance of a preliminary award?

COUNTER STATEMENT OF THE CASE

This case was commenced when the Association of Scientists and Professional Engineering Personnel ("ASPEP") sought an order in the District Court for the Eastern District of Pennsylvania requiring the International Federation of Professional and Technical Engineers, Local 241 ("Local 241") and RCA Corporation ("RCA")[1]

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1. Pursuant to Supreme Court Rule 28.1 RCA Corporation states that, with the exceptions set forth below, all of its subsidiaries, both domestic and foreign, are wholly owned. Each subsidiary that is not wholly owned is set forth below, followed by a designation of its jurisdiction and the composition of its ownership. Companies appearing in the ownership column that are marked with an asterisk are wholly owned subsidiaries of RCA Corporation.

Subsidiary	*Jurisdiction*	*Ownership*
Hertz Italiana S.p.A.	Italy	(75%) Hertz Int'l*
		(25%) FIAT S.p.A.
Fly & Drive Center Co., Ltd.	Japan	(50%) Hertz System, Inc.*
		(50%) Nippon Rent-A-Car Services, Inc.
United Truck Leasing, Inc. (United)	Minnesota	(99.7%) Hertz*
		(.3%) Minority holders
Lawrence Motors, Inc.	Minnesota	(100%) United
Red Wing Transportation Corporation	Minnesota	(100%) United
Red Wing Truck Rental, Inc.	Minnesota	(100%) United
RCA Solid State Ltda.	Brazil	(51%) RCA Electronica Ltda.*
		(49%) Philco Radio e Television Ltda.

to engage in a tri-partite arbitration proceeding with ASPEP to resolve a jurisdictional dispute between the two

1. (Cont'd.)

Subsidiary	*Jurisdiction*	*Ownership*
RVC Corporation	Japan	(50%) Bermuda*
		(50%) Victor Company of Japan, Ltd.
Edizioni Musicali Acqua Azzurra S.r.l.	Italy	(51%) RCA Musica S.p.A.*
		(49%) Individuals
RCA S.A.	Spain	(94.14%) IDC*
		(3.88%) Urech Group
		(1.98%) Others
Ediciones Musicales RCA Espanola, S.A.	Spain	(100%) RCA S.A. (Spain)
Ediciones Musicales Universal, S.A.	Spain	(100%) Ediciones Musicales RCA Espanola, S.A.
Ediciones Musicales Brincos, S.A.	Spain	(100%) Ediciones Musicales Universal, S.A.
RCA, S.A. de C.V.	Mexico	(75%) IDC*
		(25%) DESC (Mexican Group)
Editorial Mexicana de Musica, S.A. de C.V.	Mexico	(100%) RCA, S.A. de C.V.

unions as to certain technical work assignments at RCA's Moorestown, New Jersey facility.

The work assignments in dispute come within the provisions of RCA's respective collective bargaining agreements with ASPEP and with Local 241. Over 15 years ago, a similar work assignment question arose in RCA's Camden, New Jersey, facility and the dispute between RCA and Local 241 was settled by an arbitration award issued by Arbitrator Laurence E. Siebel in 1964 ("Camden Award"). Arbitration proceedings concerning the Moorestown dispute between Local 241 and RCA began 14 years later, in 1978, before the late Arbitrator S. Herbert Unterberger ("Unterberger"). RCA had assigned certain jobs to ASPEP members, and Local 241 claimed that those jobs should have been assigned to its members.

At a hearing held on March 13, 1978, Local 241 and RCA agreed that Unterberger should decide the preliminary issue of whether the 1964 Camden Award applied at the Moorestown facility. In accordance with that agreement, Unterberger issued an Interim Award of Arbitrator ("Interim Award") dated May 25, 1978 in which he determined with respect to this preliminary issue that, since the provisions concerning job assignments involved in the Camden contract were identical to the provisions in the Moorestown contract, the interpretation of the contract language contained in the Camden award did apply to Moorestown. In that Interim Award, Unterberger explicitly provided that the "extent of the application of those provisions so interpreted to situations in the Moorestown plant with different sets of facts will depend on those sets of facts." (Appendix at 1a). Unterberger stated in his opinion:

> "That [1964 Camden] Award then applied that interpretation to the facts of the case presented in [the

> Camden Grievance]. Insofar as the grievances involved in this case have an identical set of facts, that Award would also apply to them. This would also appear to be the situation for those that involved closely similar sets of facts. To the extent that the facts differ significantly from those in [the Camden Grievance], the Award would have to be based on the application of that interpretation to the specific set of facts." (Appendix at 9a).

Accordingly, a second hearing was scheduled for February 16, 1979 for the express purpose of determining to what extent the Camden Award did apply to the facts at Moorestown.

ASPEP sought leave to intervene in the second hearing, seeking to protect its members' interests in the work assignments involved. Local 241 stated that it had no objection to ASPEP's intervention, provided ASPEP accepted the 1964 Award and the Interim Award as binding on the rights of its members irrespective of the fact that the application of these awards to the particular facts at Moorestown was yet to be determined. ASPEP declined to accept this condition and initiated suit in district court seeking tri-partite arbitration. RCA filed a counterclaim and cross-claim also seeking tri-partite arbitration. ASPEP and Local 241 filed cross-motions for summary judgment. Local 241 sought an order that ASPEP would be bound by the preliminary Interim Award. District Judge Louis H. Pollak denied Local 241's motion, and granted ASPEP's motion, ordering that the arbitration continue as a tri-partite proceeding.

The Court of Appeals for the Third Circuit affirmed that decision. Local 241 filed a petition for rehearing in the Third Circuit, which petition was denied. Local 241 seeks certiorari.

SUMMARY OF ARGUMENT

Local 241 has not advanced any legitimate basis for this Court to grant certiorari. The decision of the Court of Appeals for the Third Circuit does not raise any new or important question concerning federal labor law. That decision endorses the well-accepted policy favoring tripartite arbitration as the most desirable method for resolving work assignment disputes arising under the Labor-Management Relations Act.

Because the case at bar does not involve a final, enforceable bi-partite arbitration award, the decision below does not affect the national labor policy in favor of according deference to final arbitration awards and does not conflict with any decision of any other court of appeals in which the court has deferred to such a final award.

The contentions raised by Local 241 were carefully considered and rejected by the courts below and do not warrant further review.

REASONS FOR DENYING THE WRIT

I. The Decision Below Does Not Vacate a Final Bi-Partite Arbitration Award in Order to Allow for Tri-Partite Arbitration.

Local 241 argues that the decisions of the district court and the court of appeals vacated a valid award entered under a bi-partite proceeding in favor of tri-partite arbitration and that this result has two undesirable effects on the federal common law of labor relations. Local 241 argues first that the decisions effectively nullify a previous decision of this Court holding that bi-partite arbitration is a valid forum for the resolution of work assignment disputes under contracts governed by § 301 of the Labor-Management Relations Act of 1947. It further argues that the lower court decisions erode the national labor policy favoring the finality of arbitration. The decisions of the lower courts have neither effect.

With respect to the first alleged effect, it is clear that the lower court decisions pose no threat to this Court's statement in **Carey v. Westinghouse Electric Corp.**, 375 U. S. 261 (1964), that bi-partite arbitration is an available method for resolving work assignment disputes. In **Carey**, this Court held that such arbitration is not barred by the National Labor Relations Board's authority regarding questions of union representation. **Carey** in no way was limited to approving only bi-partite arbitration, and cannot be read as a blanket endorsement of that method as the only or even the best method for resolving such disputes. To the contrary, as Local 241 concedes, decisions rendered subsequent to **Carey** reflect a clear trend among federal courts which strongly favors tri-partite arbitration as the best and most practical method for the resolution of work assignment disputes. (See cases cited at footnote 2 of the Petition).

In arriving at its conclusion, the Third Circuit relied on several of the post-Carey decisions encouraging tri-partite arbitration. Chief Judge Seitz, writing for the court, cited **Transportation-Communication Employees Union v. Union Pacific Railroad Co.**, 385 U. S. 157 (1966), in which this Court held that the Railroad Adjustment Board was obligated to settle a work assignment dispute between two unions in a single proceeding. The Court of Appeals further relied on **Columbia Broadcasting System, Inc. v. American Recording and Broadcasting Ass'n**, 414 F. 2d 1326 (2d Cir. 1969), *aff'g*, 293 F. Supp. 1400 (S. D. N. Y. 1968), in which the court, applying the principle enunciated in **Transportation-Communication**, affirmed the lower court's order that a work assignment dispute arising under the Labor-Management Relations Act should be resolved through tri-partite arbitration. Finally, the court followed its own decision in **Window Glass Cutters League of America v. American St. Gobain Corp.**, 428 F. 2d 353 (3d Cir. 1970), in which it required joinder of a second union in a Labor-Management Relations Act suit involving a dispute over work assignments.

These cases recognize that the rational, meaningful and peaceful resolution of work assignment disputes and the avoidance of potentially conflicting results require that all parties to such disputes appear before the same tribunal. In the instant case, the Third Circuit carefully weighed these considerations in conjunction with the stated national labor policy favoring the prompt and orderly settlement of all disputes and the court's traditional policy encouraging arbitration, and correctly concluded that the litigants should commence tri-partite arbitration without being bound by a preliminary award (Appendix B to Petition at 3a-4a).

It is significant that Local 241 does not challenge the validity or the growing strength of the judicial encouragement of tri-partite arbitration, but only contends that tri-

partite arbitration is not appropriate under *this* particular set of facts (Petition at 12). Accordingly, it is clear that the Court of Appeals decision raises no important issue having any possible consequence requiring this Court's attention, but raises only an issue limited to the facts to which it is addressed. Local 241's assertion that the Court of Appeals decision "nullifies" **Carey**, which permitted bi-partite arbitration but by no means precluded tri-partite arbitration, is simply erroneous.

The second "important" impact of the opinion below asserted by Local 241—that the decision erodes the national policy favoring finality of arbitration—is equally without merit. Local 241 continues to ignore, as it did below, the critical fact that an interim award is not a final award. Accordingly, the policy favoring finality of arbitration is totally unaffected by the decisions below.

The Interim Award decided only the preliminary issue that, since the contract provisions of the Moorestown plant collective bargaining agreement were virtually identical to those of the Camden plant agreement, the earlier interpretation of the provisions of the Camden agreement in the Camden Award was applicable to the Moorestown agreement. It is highly significant that the use of an "Interim Award" is commonplace when an arbitration proceeding is divisible into two (or more) phases; the "Interim Award" is used to dispose of a preliminary phase or phases and a "Supplemental Award" or "Final Award" is issued to dispose ultimately of the entire matter. F. Elkouri and E. A. Elkouri, *How Arbitration Works*, 214-15 (3d ed. 1973). This was precisely the situation presented to the courts below. Unterberger's Interim Award disposed of only the first phase of the arbitration proceeding —the applicability of the contract interpretation in the 1964 Camden Award to the Moorestown dispute. The final award, which would resolve the entire matter and apply that contract interpretation to the specific facts at

Moorestown, awaited a further hearing. Judge Pollak correctly stated the factual posture of the case:

> "[I]f we assume that there comes a point of vestedness in the arbitral process, I cannot see in the bipartite arbitration that has been going forward since 1977 or 1978 between Local 241 and RCA with respect to the Moorestown job that any such stage of vestedness has been arrived at.
>
> "I fully undestand Local 241's interest in protecting as 'law of the case or law of the arbitration' the interim Unterberger award of May 25, 1978, but, *important as that determination was, all it was was an announcement to the parties these are the legal ground rules on which I now anticipate I will rely in examining the facts of the particular jobs which are in dispute.*" (Appendix D to Petition at 24a-25a) (emphasis added).

Local 241's argument that the decision ordering the arbitration to continue as a tri-partite proceeding "vacated" the Interim Award not only obscures the correct facts; it misconceives the principles of federal common law governing finality of arbitration decisions.

Many arbitration awards are not sufficiently final to have a binding effect and the Interim Award in this case is one of them. In order to be final and binding, an award must resolve the entire claim that has been submitted, so that no further litigation is necessary to determine the obligations of the parties, *e. g.*, **La Vale Plaza, Inc. v. R. S. Noonan, Inc.**, 378 F. 2d 569 (3d Cir. 1967); **Puerto Rico Maritime Shipping Authority v. Star Lines Ltd.**, 454 F. Supp. 368, 372 (S. D. N. Y. 1978); or it must determine a separable issue that can stand alone and is not dependent upon resolution of the remainder of the award to have effect, such as a determination of liability which is independent of a claim for punitive damages or attorney's

fees. **Refino v. Feuer Transportation, Inc.**, 480 F. Supp. 562, 567 (S. D. N. Y. 1979). To be enforceable as a final resolution of a dispute, an award "must be certain, final and complete and leave no doubt as to the manner in which it is to be made effective." **Electrical Contractors Ass'n v. IBEW, Local 103**, 327 F. Supp. 1177, 1181 (D. Mass. 1971), *aff'd*, 458 F. 2d 590 (1st Cir. 1972).

The preliminary award in the instant case resolved only part of the job assignment issue. Without application to the facts of the case as they related to the Moorestown plant, the contract interpretation contained in the Interim Award was meaningless.

It is patently apparent that, contrary to the impression which Local 241 attempts to create, the true reason it urges review is its fear that it may not obtain the work assignments that RCA has made to ASPEP members in a proceeding in which the rights of *all* interested parties would be considered. To ask this Court, in effect, to guarantee a successful outcome for Local 241 in that proceeding by binding the parties to a 16-year old contract interpretation does not provide a valid basis for granting certiorari. See Supreme Court Rule 17.

The decisions below do not raise an important issue of federal labor law. They turned upon the unique facts of this case and will affect no one other than the three litigants who will continue in tri-partite arbitration. The courts below fully considered and correctly decided the issues presented and certiorari should not be granted.

II. The Decision of the Third Circuit Does Not Conflict With Any Decision of Any Other Court of Appeals.

Contrary to Local 241's assertions, the decision of the Court of Appeals for the Third Circuit in this case does not conflict with any other circuit court decision. Local 241 contends that the instant decision conflicts with

Louisiana-Pacific Corp. v. IBEW, Local 2294, 600 F. 2d 219 (9th Cir. 1979), wherein the court denied an employer's suit to compel tri-partite arbitration after two inconsistent *final* bi-partite awards had been rendered in two different proceedings. Judge Pollak held, and the Third Circuit agreed, that this decision did not preclude tri-partite arbitration in the case at bar because of a critical factual distinction. In **Louisiana-Pacific,** the court declined to set aside the two inconsistent arbitral awards because they had been rendered as final awards *before* the employer sought tri-partite arbitration. Unlike that case, the interim arbitral award involved in the case at bar was not final; it decided only a preliminary issue in an arbitration proceeding that was still in progress. Finally, unlike the employer in **Louisiana-Pacific,** RCA in its cross-claim and counterclaim sought tri-partite arbitration before it was confronted with two conflicting awards.

For the same reason, the decision below does not conflict with the Second Circuit's decision in **Local 771, I. A. T. S. E. v. RKO General, Inc.,** 546 F. 2d 1107 (2d Cir. 1977), which also involved a final arbitration award.

Local 241's persistent refusal to contend with the critical distinguishing fact that no final enforceable award exists in the case at bar is a poorly disguised attempt to manufacture a valid basis for securing certiorari. While a direct and irreconcilable conflict may provide a legitimate basis for review, *see, e.g.,* **Avco Corp. v. Aero Lodge No. 735,** 390 U.S. 557, 559 (1968); **Northeastern Pennsylvania Nat'l Bank & Trust Co. v. United States,** 387 U. S. 213, 217 (1967), an illusory conflict such as that asserted by Local 241 does not.[2]

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2. Clearly, the Third Circuit opinion is not in conflict with **Sheet Metal Workers, Local No. 49 v. Los Alamos Constructors, Inc.,** 550 F. 2d 1258 (10th Cir. 1977), in which the court compelled tri-

CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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Dated March 20, 1981

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2. (Cont'd.)
partite arbitration after a bi-partite award had been entered, or **Local 416, Sheet Metal Workers Int'l Ass'n v. Helgesteel Corp.**, 507 F. 2d 1053 (7th Cir. 1974), where the court ordered multilateral arbitration after two inconsistent bi-partite awards had been entered.

Appendix.

AMERICAN ARBITRATION ASSOCIATION
VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration between
INTERNATIONAL FEDERATION of PROFESSIONAL and TECHNICAL ENGINEERS, LOCAL 241
and
RADIO CORPORATION of AMERICA

Case Number: 14 30 1516 77 M/J

INTERIM AWARD OF ARBITRATOR

The undersigned arbitrator, having been designated in accordance with the arbitration agreement entered by the above-named Parties, and dated June 7, 1974 and having been duly sworn and having duly heard the proofs and allegations of the Parties, Awards as follows:

1. The interpretation contained in the December 10, 1964 Award in American Arbitration Association Case No. L-34324, PHI-L-244-62 of the provisions of the Camden plant Agreement that are identical to the provisions in the Moorestown plant Agreement is found to be equally applicable in the Moorestown plant.

2. The application of those provisions so interpreted in that Award is found to be equally applicable to situations in the Moorestown plant with the same or closely similar set of facts as in Grievance No. 30645

involved in that case. The extent of the application of those provisions so interpreted to situations in the Moorestown plant with different sets of facts will depend on those sets of facts.

S. HERBERT UNTERBERGER

Arbitrator's signature (dated)
S. Herbert Unterberger
Arbitrator

May 25, 1978

OPINION

The preliminary issue in this case, which is decided by this Interim Award, is whether the December 10, 1964 Award in American Arbitration Association Case No. L-34324, PHI-L-244-62, which was agreed to by the parties as the basis for the settlement of Grievance No. 30645 that arose in the Company's Camden, N. J. plant, is applicable in its Moorestown, N. J. plant.

The essential facts are:

1. By a supplemental agreement dated May 14, 1957, the parties agreed to the following revised occupational definition of the Technical Writer and Editor classification:

> "Compiles, writes and edits a wide variety of technical material such as instructional leaflets, manuals, books, operation folders or installation and maintenance directions related to products manufactured by RCA and participates as required in preparation of reports and proposals of a technical nature.
>
> Analyzes preliminary production schedules and confers with appropriate supervision to determine needs and plans work to meet schedules. Confers with design and development engineers and others to obtain necessary information preparatory to making rough drafts of material. Prepares text and plans details of material by reviewing drawings, technical publications, miscellaneous engineering data, and customer's specifications. Plans format of material in accordance with application and requirements and directs the preparation of sketches, drawings, photographs, or schematic diagrams to be included with text. Obtains necessary approvals of completed text and collaborates with illustrators to plan cover and page layouts, including illustrations and photographs. Initiates requests as required for type proofs and repro-

duction proofs including text and finished illustrative material. Verifies proofs and completed material prepared by printing vendors for accuracy, quality and general appearance. Participates as required in writing technical articles for engineering societies, management and other publications. Directs the efforts of Technical Writers, reviews and edits their material and recommends appropriate alterations or corrections when necessary."

In that agreement, this classification was referred to as No. 5967 at the Camden plant and No. 5969 at the Moorestown plant. Those occupational definitions have been included in the subsequent labor agreements, including the one in effect in 1964 when the Award was issued and the 1974-1978 agreement under which this case arose.

2. Although separate Camden and Moorestown agreements are published, they are negotiated together with the same Local Union, include the same General Agreement and almost identical Supplementary Agreements. Attachment 1 of each of them includes descriptions of the occupations at each of those locations. Both include the Technical Writer and Editor classification described identically as quoted above. It continues to be referred to as No. 5967 in the Camden agreement and No. 5969 in the Moorestown agreement.

3. In February 1961, the following Grievance No. 30645 was submitted on behalf of the employees in this classification at the Camden plant:

"The Union contends that the following facts constitute a valid grievance and must be corrected immediately:

The Company is violating paragraph 17.07 of the general agreement in the preparation (writing and

editing) of reports and proposals of a technical nature.

The Union demands that the Company correct this condition immediately."

Paragraph 17.07 states:

"WORK ASSIGNMENTS: Employees who are excluded from the jurisdiction of the bargaining unit shall not be assigned to nor perform work of a nature normally performed by employees included in the bargaining unit."

4. On December 10, 1964, the arbitrator in the case involving that grievance issued the following Opinion and Award:

"This matter was submitted to arbitration under the rules of the American Arbitration Association in accordance with the provisions of the Collective Bargaining Agreement between the parties. The parties appeared before me and during the course of the hearing agreed at my request to consider the posssibilities of arriving at an amicable solution to the grievance.

After discussion and after consultation with me, the parties agree that the grievance is settled upon the following basis.

Writing which is part of the research and design engineering team effort and which is performed by Research, Design and Development engineers is not the work of Occupation 5967. When the product of the engineering team effort is to be used for a report or proposal to a customer, it will be sent to the person or activity in charge of coordinating such report or proposal, and any subsequent writing, rewriting, editing and compiling will be the work of Occupation 5967.

Writing which is performed in connection with customer reports and proposals in such activities as marketing, facilities, manpower, etc. is not the work of Occupation 5967. However, when the output of such activities is to be used for a report or a proposal to a customer, it will be sent to the person or activity in charge of coordinating such report or proposal, and any subsequent writing, rewriting, editing and compiling will be the work of Occupation 5967.

It is understood that any writing, rewriting, editing and compiling required after the report or proposal is released to the printer is not the work of Occupation 5967, but that the Company may require, at its discretion, employees of Occupation 5967 to perform duties at the printer's premises. It is further understood that the reports on which Occupation 5967 will work are those reports which are now being sent to the person or activity in charge of coordinating such reports.

After careful consideration, I am of the opinion that the amicable agreement reached between the parties is a reasonable one and the settlement reached is adopted as my Award in this matter."

5. Thereafter, discussions were held between the parties about the application of this Award in the Moorestown, N. J. plant but no agreement was reached. In November 1965, the following Grievance No. 95380 was submitted on behalf of the employees in this classification at that plant:

"The Company has violated the General and Supplementary Agreement and the directives of Arbitration Case No. L-34324 PHI-L-244-62 by assigning personnel not included in Occupation 5969 to perform the duties of writing, rewriting, editing, and

compiling reports and proposals being submitted to the customer.

The Union demands that these practices be stopped immediately and all report and proposal work be assigned to occupation 5969 as directed by Arbitration Case No. L-34324 PHI-L-244-62."

6. Although the following Company response to that grievance:

"No specific instances are known but the company agrees to assign one man of its choice to the reports and proposal section on a full-time basis."

was put into effect, it failed to satisfy the Union. It discussed the matter further with the Company and then entered suit in the U. S. District Court in an effort to enforce the arbitration Award at the Moorestown plant. When that suit was dismissed on the basis that it sought relief based on matters exclusively subject to the arbitration process, the issue was referred to this arbitration. A hearing was held on March 13, 1978. Post-hearing briefs were submitted by both parties.

Union Position

It was the Union's position that the 1964 arbitration Award necessarily controlled similar situations in the Moorestown plant. To do otherwise would, in its view, by contrary to the following provision in Paragraph 7.08 of the Master Agreement:

". . . Such arbitration shall be under the voluntary labor arbitration rules then obtaining of the American Arbitration Association. . . . The Parties agree that the decision or award of such Arbitrator shall be final and binding on each of the Parties and that they will

> abide thereby subject to such laws, governmental rules and regulations as may be applicable. In no event shall the same question or issue be the subject of arbitration more than once."

which barred the rearbitration of previously-decided issues.

It maintained that the Company had not denied that the issue in dispute at the Moorestown plant is the same as the one decided in the 1964 Award. Its witness testified that, during some ten years of discussion between 1964 and 1974, the Company had not denied that the Award was also applicable at the Moorestown plant. Those discussions related to the method of its application. That uncontradicted testimony stated that the Company did not take the position that that Award did not control Moorestown until the second step meeting held in 1974 on the grievance involved in this case.

In addition, the Union argued that, by its action in the above-quoted Grievance No. 95380, it acknowledged that the 1964 Award was applicable in the Moorestown plant.

Company Position

It was the Company's position that the 1964 Award is not applicable at the Moorestown plant because:

1. It is in fact a settlement by the parties of a particular grievance that involved only Occupation No. 5967 which is found only at the Camden and not at the Moorestown plant.

2. In the Company's view, the Camden and Moorestown plants are separate and distinct as evidenced by their separate labor agreements and separate bargaining units.

The Company denied that the absence of any specific statement by it that the 1964 Award did not apply to the

Moorestown plant implied its agreement that it did so, particularly in view of its actions which, in its view, were always contrary to that position.

Basis of the Award

The 1964 arbitration Award constituted not only that arbitrator's interpretation and application of the provisions of the agreement relevant to the issue involved in that case but, because it incorporated the agreement of the parties, it constituted also the parties' interpretation and application of those provisions and reflected their intentions regarding their meaning.

Those provisions are not only identical in both agreements but were negotiated together by the same negotiating teams. It must be concluded that they reflected the same intentions. From this, it follows logically that insofar as the 1964 arbitration Award interpreted those provisions in one of the agreements, that interpretation would be the same and, therefore, equally applicable to the identical provisions in the other contract. Furthermore, as a practical matter, there would not appear to be any way to avoid this.

That Award then applied that interpretation to the facts of the case presented in Grievance No. 30645. Insofar as the grievances involved in this case have an identical set of facts, that Award would also apply to them. This would also appear to be the situation for those that involved closely similar sets of facts. To the extent that the facts differ significantly from those in Grievance No. 30645, the Award would have to be based on the application of that interpretation to the specific set of facts.

The conclusion in this case is that:

1. The interpretation contained in the 1964 Award of the provisions of the Camden plant agreement that are

identical to the provisions in the Moorestown plant agreement is found to be equally applicable in the Moorestown plant.

2. The application of those provisions so interpreted in the 1964 Award is found to be equally applicable to situations with the same or closely similar sets of facts in the Moorestown plant. The extent of the application of those provisions so interpreted to situations with different sets of facts will depend on those sets of facts.